

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

Plaintiff

vs. Criminal Action No. 01-06ERJE

DANIEL J. LEVETO

Defendant

PROCEEDINGS

Transcript of Jury Trial commencing on Thursday,

11 June 2, 2005, United States District Court, Erie,
Pennsylvania, before Honorable Maurice B. Cohill, Jr.
12 District Judge.

13 APPEARANCES:

14 For the Government: For the Department of Justice

By: Rita Calvin, Esq.

15 By: Thomas Voracek, Esq.

16 For the Defendant: Pro Se

Stephen Misko, Esq.(Standby)

Reported by:

Michael D. Powers, RMR

Official Court Reporter

Room 5335 USPO & Courthouse

Pittsburgh, Pennsylvania 15219

(412) 208-7572

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22 Proceedings recorded by mechanical stenography. Transcript
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1 **I N D E X**

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1 PROCEEDINGS

2 (Court reconvened on Thursday, June 2nd, 2005, at 8:35 a.m.)

3 THE COURT: You said there was a question about the

4 plea letter. I never saw it yesterday. It wasn't handed up

5 to me. So, we will get a copy.

6 MR. VORACEK: If you go into the Clerk's Office, it

7 may be -- was that docketed with a different number because I

8 think we had to file an information?

9 MS. CALVIN: It would not be 01-6.

10 MR. WILLIAMS: (Law Clerk) If she pled to 01-06,

11 it should be filed under that.

12 MS. CALVIN: I think --

13 THE COURT: This can be off the record.

14 (Off the record discussion.)

15 (The jury entered the courtroom.)

16 THE COURT: Good morning, and thank you for coming

17 in the way you did. You have been a very prompt jury.

18 Well, ladies and gentlemen, what I am going to do

19 now is give you the charge on the law. And, you know, these

20 instructions are usually pretty difficult for a person to

21 grasp if they are hearing this kind of thing for the first

22 time.

23 And for that reason -- not many Judges do this, I

24 don't believe -- but, anyway, I believe in the jury having a

25 copy of these. And I am going to read them and I ask if you

1 would just read along with me because I think you're better

2 able to absorb what's in there. And, of course, when you go

3 to the jury room, you will be able to take these with you for

4 ease in reference. Please don't read ahead of me. Just read

5 along with me on this thing. And I may, once in a while,

6 just divert slightly from the text to enhance an explanation,

7 or something like that. But, nevertheless, I am going to

8 pretty much stick to this script.

9 Now you have heard all of the evidence to be

10 received in this trial and each of the arguments of counsel

11 and, of course, Dr. Leveto here is representing himself. So,

12 when I make reference to counsel from time to time in here, I

13 am referring not only to the lawyers for the government but

14 also to Dr. Leveto, who represented himself.

15 All of the instructions given to you by me, those

16 given to you at the beginning of the trial and those given to

17 you during the trial, and these final instructions must guide

18 and govern your deliberations.

19 It is your duty as jurors to follow the law as

20 stated in my instructions and to apply those rules of law to

21 the facts as you find them from the evidence in the case.

22 You will remember right at the very beginning of the trial, I

23 said there are really two judges in any case.

24 I'm sitting up here as the Judge or the referee

25 when it comes to questions of the law, and you folks

1 collectively are the judge when it comes to determining the
2 facts. Your job is to find the facts after I give you my
3 instructions on the law.

4 Counsel here have quite properly referred to some
5 of the governing rules of law in their argument. But if,
6 however, any differences appear to you between the law as
7 stated by me in these instructions and what the lawyers or
8 Dr. Leveto had to say, you, of course, are to be governed by
9 my instructions.

10 You are not to single out any one instruction alone
11 as stating the law, but you must consider these instructions
12 as a whole.

13 It would be a violation of your sworn duty to base
14 a verdict upon any other view of the law than that given in
15 my instructions, just as it would be a violation of your
16 sworn duty as judges of the facts to base a verdict upon
17 anything but the evidence in this case.

18 You were chosen as jurors in this trial to evaluate
19 all the evidence received and to decide each of the factual

20 questions presented by the allegations brought by the

21 government in the indictment and the plea of not guilty

22 entered by the defendant.

23 In deciding the issues presented to you for your

24 decision in this trial, you must not be persuaded by bias,

25 prejudice, or sympathy for or against any of the parties to

6

1 this case or by any public opinion.

2 Justice through trial by jury must always depend

3 upon the willingness of each individual juror to seek the

4 truth as to the facts from the same evidence presented to all

5 the jurors and to arrive at a verdict by applying the same

6 rules of law as given in the instructions of the Court.

7 I instruct you that you must presume the defendant

8 to be innocent of the crimes charged. Thus, the defendant,

9 although accused of crimes in the indictment, begins the

10 trial with a clean slate with no evidence against him. The

11 indictment, as you already know, is not evidence of any kind.

12 The law permits nothing but legal evidence presented before

13 the jury in court to be considered in support of any charge

14 against the defendant. The presumption of innocence alone,

15 therefore, is sufficient to acquit a defendant.

16 The burden is always upon the government to prove

17 guilt beyond a reasonable doubt. This burden never shifts to

18 a defendant, for the law never imposes upon a defendant in a

19 criminal case the burden or duty of calling any witnesses or

20 producing any evidence. The defendant is not even obligated

21 to produce any evidence by cross-examining the witnesses for

22 the government.

23 It is not required that the government prove guilt

24 beyond all possible doubt. The test is one of reasonable

25 doubt. A reasonable doubt is a doubt based upon reason and

1 common sense, the kind of doubt that would make a reasonable

2 person hesitate to act. Proof beyond a reasonable doubt

3 must, therefore, be proof of such a convincing character that

4 a reasonable person would not hesitate to rely and act upon

5 it in the most important of his or her own affairs.

6 Unless the government proves beyond a reasonable

7 doubt that the defendant has committed each and every element

8 of the offense charged in the development, you must find the

9 defendant not guilty of the offense. If the jury views the

10 evidence in the case as reasonably permitting either of two

11 conclusions, one of innocence, the other of guilt, the jury

12 must, of course, adopt the conclusion of innocence.

13 The evidence in the case consists of the sworn

14 testimony of the witnesses, regardless of who may have called

15 them, and all exhibits received in evidence, regardless of

16 who may have produced them.

17 Any proposed testimony or proposed exhibit to which

18 an objection was sustained by me must be entirely

19 disregarded.

20 Anything you may have heard or seen outside the

21 courtroom is not evidence and must be entirely disregarded.

22 Questions, objections, and arguments of counsel are

23 not evidence in the case unless made as a stipulation of

24 fact.

25 You are to base your verdict solely on the evidence

1 received in the case. In your consideration of the received,

2 however, you are not limited to the bald statements of the

3 witnesses or to the bald assertions in the exhibits. In

4 other words, you are not limited solely to what you see and
5 hear as the witnesses testify or as the exhibits are
6 admitted. You are permitted to draw from facts which you
7 find have been proved such reasonable inferences as you feel
8 are justified in the light of your experience and common
9 sense.

10 Now, there is an old saying among the lawyers that
11 jurors don't leave their common sense on the courthouse steps
12 when they enter the building. You are only to consider the
13 evidence that you hear in the courtroom, but you people come
14 from various backgrounds, you are various ages, you have all
15 had different kinds of life experiences, and as a jury then
16 collectively you apply your lifetime experience and common
17 sense in determining just what the facts are in this case.

18 Inferences are simply deductions or conclusions
19 which reason and common sense lead you to draw from the
20 evidence received in the case. You are permitted to draw
21 such inferences.

22 You as jurors are the sole judges of the
23 credibility of each of the witnesses called to testify in
24 this case and only you determine the importance of the weight

25 that their testimony deserves. And, of course, by

1 credibility, we simply meaning believability. After making
2 your assessment concerning the credibility of a witness, you
3 may decide to believe all of that witness' testimony, only a
4 portion of it, or none of it.

5 In making your assessment of that witness, you
6 should carefully scrutinize all the testimony given by that
7 witness, the circumstances under which each witness has
8 testified, and all other evidence which tends to show whether
9 a witness, in your opinion, is worthy of belief. Consider
10 each witness' intelligence, motive to falsify and state of
11 mind, and appearance and demeanor and manner while on the
12 stand. Consider the witness' ability to observe the matters
13 as to which he or she testified and consider whether he or
14 she impressed you as having an accurate memory or
15 recollection of these matters. Consider also any relation a
16 witness may bear to either side of the case, the manner in
17 which each witness might be affected by the verdict and the
18 extent to which, if at all, each witness will either be
19 supported or contradicted by other evidence in the case.

20 You should decide whether you believe what each
21 witness to say and how important that testimony was. In
22 making that decision, I suggest that you further ask yourself
23 a few questions:

24 Did the witness impress you as honest? Did the
25 witness have a particular reason not to tell the truth? Did

10

1 the witness have a personal interest in the outcome of the
2 case? Did the witness seem to have a good memory? Did the
3 witness appear to understand the questions clearly and answer
4 them directly? Did the witness' testimony differ from the
5 testimony of other witnesses?

6 Inconsistencies or discrepancies in the testimony
7 of a witness or between the testimony of different witnesses
8 may or may not cause you to disbelieve or discredit such
9 testimony. Two or more persons witnessing an incident or a
10 transaction may simply see or hear it differently. Innocent
11 misrecollection, like failure of recollection, is not an
12 uncommon experience. In weighing the effect of a
13 discrepancy, however, always consider whether it pertains to

14 a matter of importance or an insignificant detail, and

15 whether the discrepancy results from innocent error or

16 intentional falsehood.

17 After making your own judgment or assessment

18 concerning the believability of a witness, you can then

19 attach such importance or weight to that testimony, if any,

20 that you may feel it deserves. You will then be in a

21 position to decide whether the government has proven the

22 charge beyond a reasonable doubt.

23 The testimony of a single witness, even if not

24 supported by any other evidence, is sufficient to support a

25 conviction. Again, the weight and the sufficiency of the

1 evidence is a matter for you, the jury, to decide.

2 The testimony of a witness may be discredited or,

3 as we sometimes say, impeached by showing that the witness

4 previously made statements which were different than or

5 inconsistent with the witness' testimony here in court. The

6 earlier inconsistent or contradictory statements are

7 admissible only to discredit or impeach the credibility of

8 the witness and not to establish the truth of these earlier

9 statements made somewhere other than here during the trial.

10 It's within the province of the jury to determine the

11 credibility, if any, to be given the testimony of a witness

12 who has made prior inconsistent or contradictory statements.

13 If a witness has shown to have knowingly testified

14 falsely concerning any important or material matter, you

15 obviously have a right to distrust the testimony of such an

16 individual concerning other matters. You may reject all of

17 the testimony of that witness or give it such weight or

18 credibility as you may think it deserves.

19 You've heard the testimony of former Internal

20 Revenue Service Special Agents Robert Lapina and Manuel

21 Gonzalez, Internal Revenue Service representative Mary Somma

22 and Internal Revenue Service Agent Kim Iddon. The fact that

23 a witness may be employed by an agency of the federal

24 government does not mean that his or her testimony is

25 deserving of more or less consideration or greater or lesser

1 weight than that of an ordinary witness.

2 At the same time, it's quite legitimate for the

3 defense to attack the credibility of an Internal Revenue

4 Service agent witness on the grounds that his or her

5 testimony may be colored by a personal or professional

6 interest in the outcome of the case.

7 It will be your decision, after reviewing all the

8 evidence, whether to accept the testimony of each Internal

9 Revenue Service agent witness and to give to that testimony

10 whatever weight, if any, you find it deserves.

11 You should judge the testimony of Daniel Leveto in

12 the same manner as you judge the testimony of any other

13 witness in this case.

14 Your decision on the facts of this case should not

15 be determined by the number of witnesses testifying for or

16 against a party. You should consider all the facts and

17 circumstances in evidence to determine which of the witnesses

18 you choose to believe or not believe. You may find that the

19 testimony of a smaller number of witnesses on one side is

20 more credible than the testimony of a greater number of

21 witnesses on the other side.

22 Testimony of a single, uncorroborated witness is

23 sufficient to support a conviction. And I remind you that

24 you, the jury, are the sole judges of the credibility of each

25 witness.

13

1 There is nothing particularly different in the way
2 that a juror should consider the evidence in the trial from
3 that in which any reasonable and careful person would treat
4 any other important question that must be resolved by
5 examining facts, opinions and evidence. You are expected to
6 use your good sense in considering and evaluating the
7 evidence in the case for only those purposes for which it's
8 been received and to give such evidence a reasonable and fair
9 construction in the light of your common knowledge of the
10 natural tendencies and inclinations of human beings.

11 If the defendant be proved guilty beyond a
12 reasonable doubt, say so. If not proved guilty beyond a
13 reasonable doubt, say so.

14 Keep constantly in mind that it would be a
15 violation of your sworn duty to base a verdict of guilty upon
16 anything other than the evidence received in the case and the
17 instructions of the Court. Remember as well that the law
18 never imposes upon a defendant in a criminal case the burden

19 or duty of calling any witnesses or producing any evidence

20 because the burden of proving guilt beyond a reasonable doubt

21 is always assumed by the government.

22 Remember also that the question before you never

23 can be, will the government win or lose the case? The

24 government always wins when justice is done, regardless of

25 whether the verdict be guilty or not guilty.

14

1 Now, there are two types of evidence from which you

2 may find the truth as to the facts of the case, direct

3 evidence and circumstantial evidence.

4 Direct evidence is the testimony of a person who

5 asserts or claims to have actual knowledge of a fact, such as

6 an eyewitness.

7 Circumstantial evidence is proof of a chain of

8 facts and circumstances indicating the existence of a fact.

9 And let me give you a little, simple example of

10 what I am talking about there. Sometimes you see on TV or in

11 the movies, somebody will say, oh, that is circumstantial

12 evidence. That's no good. Well, that's an incorrect

13 statement of the law, at least as far as the federal law is

14 concerned. Circumstantial evidence is admissible and may be

15 considered by a jury. And what do we mean by that?

16 Well, let's say that your house looks out on your

17 back yard, and you are getting ready to go to bed one

18 winter's night, and it is cold out, but there hadn't been any

19 snow. And you look out the bedroom window and you see a

20 rabbit sitting in the back yard.

21 And the next day if somebody says, was there a

22 rabbit in your back yard? You can say, yeah, you saw it. I

23 was an eyewitness.

24 The next morning, you wake up in the morning and

25 the first thing you notice is, during the night, it snowed.

15

1 And then you see across that new-fallen snow some tracks, and

2 you know rabbit tracks when you see them. Well, you didn't

3 see the rabbit, but you saw the tracks. And that day if

4 somebody said, was there a rabbit in your yard last night?

5 You could say, yeah, there was. I didn't see the rabbit, but

6 I saw his tracks, and that is circumstantial evidence that

7 the rabbit was there.

8 So, that's what we are talking about, that

9 distinction.

10 As I said, the law makes absolutely no distinction

11 between the weight or value to be given to either direct or

12 circumstantial evidence. Nor is a greater degree of

13 certainty required of circumstantial evidence than of direct

14 evidence. You should weigh all the evidence in the case.

15 After weighing all the evidence, if you are not convinced of

16 the guilt of the defendant beyond a reasonable doubt, you

17 must find the defendant not guilty.

18 You should analyze all of the testimony and

19 harmonize as much of it as you can; that is, fit it together.

20 If there are conflicts in the testimony that cannot be

21 resolved by harmonizing them, then you must determine which

22 evidence is factual and which is not. You must use your best

23 efforts and your own notes to recall the testimony.

24 The defendant is not on trial for any act or any

25 conduct not specifically charged in the indictment.

1 The indictment charges that the offenses alleged

2 were committed in or around and on or about certain dates.

3 Although it's necessary for the government to prove
4 beyond a reasonable doubt that the offense was committed on a
5 date reasonably near the dates alleged in the indictment,
6 it's not necessary for the government to prove that an
7 offense was committed precisely on the date charged.

8 Now, if you were going to diagram my instructions
9 here, they would break down into three parts. The first part
10 is what I just read, and that is pretty much the instruction
11 I give in every criminal case because those principles of law
12 were general principles and they apply to just about any kind
13 of a criminal case where criminal charges are brought.

14 Now, part two of the lecture this morning is going
15 to be about the law that applies to the particular charges
16 contained in this case.

17 And then part three will be just short suggestions
18 about how you might go about your business of considering the
19 evidence in the case. So, let's look at page eleven now.

20 You have been provided, or you will be provided
21 with a copy of the indictment in this case.

22 And an indictment is but a formal method of
23 accusing a defendant of a crime. It's not evidence of any

24 kind against the defendant. The defendant, Daniel Leveto,

25 pled not guilty to the indictment and, therefore, denies that

1 he's guilty of the charges.

2 Now Count 1. This is the nature of the offense

3 charged.

4 Count 1 of the indictment charges that from in and

5 around August of 1991 until on or about May 23rd, 1997, in

6 the Western District of Pennsylvania and elsewhere, the

7 defendant, Daniel Leveto, came to some type of agreement or

8 understanding with other individuals to commit an offense

9 against the United States; namely, to defraud the United

10 States for the purpose of impeding and impairing the lawful

11 government functions of the Internal Revenue Service of the

12 Treasury Department in the ascertainment, computation,

13 assessment, and collection of income taxes, and that one of

14 its members -- that is, one of the conspiracy members --

15 thereafter committed one or more of the overt acts set out at

16 paragraphs 32 through 105 of the indictment, for the purpose

17 of achieving the goal of the alleged conspiracy or agreement

18 or understanding.

19 Now, the actual statute that he's charged with

20 violating and being part of a conspiracy is this:

21 Section 371 of Title 18 of the United States Code

22 provides that, quote, if two or more persons conspire to

23 commit any offenses against the United States, or to defraud

24 the United States, or any agency thereof, and one or more of

25 such persons do any act to effect the object of the

18

1 conspiracy an offense against the United States has been

2 committed.

3 And I instruct you that the United States

4 Department of Treasury is a department or agency of the

5 United States.

6 Now, in any criminal case, the government must

7 prove what are called the essential elements of the

8 particular crime charged. In order to sustain its burden of

9 proof to the crime of conspiracy to defraud the United States

10 as charged in Count 1 of the indictment, the government must

11 prove the following three essential elements beyond a

12 reasonable doubt:

13 One. The conspiracy, agreement or understanding to

14 defraud the United States as described in the indictment was

15 formed, reached, or entered into by two or more persons.

16 Second. At some time during the existence or life

17 of the conspiracy, agreement, or understanding, Daniel Leveto

18 knew the purpose of the agreement, and with that knowledge,

19 then deliberately joined the conspiracy, agreement or

20 understanding.

21 And, three. At some time during the existence or

22 life of the conspiracy, one of its alleged members knowingly

23 performed one of the overt acts charged in paragraphs 32

24 through an 105 of the indictment, and did so in order to

25 further or advance the purpose of the agreement.

19

1 Now, the term knowingly, as used in these

2 instructions and in the law to describe the alleged state of

3 mind of the defendant, Daniel Leveto, means that he was

4 conscious and aware of his actions, realized what he was

5 doing or what was happening around him, and did not act

6 because of ignorance, mistake or accident.

7 The intent of a person or the knowledge that a

8 person possesses at any given type may not ordinarily be
9 proved directly because there is no way of directly
10 scrutinizing the workings of the human mind. In determining
11 the issue of what a person knew or what a person intended at
12 a particular time, you may consider any statements made or
13 acts done by that person and all other facts and
14 circumstances received in evidence which may aid in your
15 determination of that person's knowledge or intent.

16 You may infer, but you are certainly not required
17 to infer, that a person intends the natural and probable
18 consequences of acts knowingly done or knowingly omitted.
19 It's entirely up to you, however, to decide what facts to
20 find from the evidence received during this trial.

21 Now, what is a conspiracy in the law? Well, a
22 criminal conspiracy is an agreement or a mutual understanding
23 knowingly made or knowingly entered into by at least two
24 people to violate the law by some joint or common plan or
25 course of action. A conspiracy is, in a very true sense, a

2 A conspiracy or agreement to violate the law, like

3 any other kind of agreement or understanding, need not be

4 formal, written, or even expressed directly in every detail.

5 The government must prove that the defendant,

6 Daniel Leveto, and at least one other person knowingly and

7 deliberately arrived at an agreement or understanding that

8 they, and perhaps others, would defraud the United States by

9 means of some common plan or course of action as alleged in

10 Count 1 of the indictment. It is proof of this conscious

11 understanding and deliberate agreement by the alleged members

12 that should be central to your consideration of the charge of

13 conspiracy.

14 To prove the existence of a conspiracy or an

15 illegal agreement, the government is not required to produce

16 a written contract between the parties or even produce

17 evidence of an expressed oral agreement spelling out all of

18 the details of the understanding. To prove that a conspiracy

19 existed, moreover, the government is not required to show

20 that all the people named in the indictment as members of the

21 conspiracy were, in fact, parties to the agreement, or that

22 all of the members of the alleged conspiracy were named or

23 charged, or that all of the people whom the evidence shows

24 were actually members of the conspiracy agreed to all the

25 means or methods set out in the indictment.

21

1 An agreement can be proved indirectly by facts and

2 circumstances which lead to a conclusion that an agreement

3 existed. But, it is up to the government to convince you

4 that such facts and circumstances existed in this particular

5 case.

6 Unless the government proved beyond a reasonable

7 doubt that a conspiracy, as just explained, actually existed,

8 then you must acquit defendant Daniel Leveto.

9 Before you the jury may find that defendant

10 Daniel Leveto, or any other person, became a member of the

11 conspiracy charged in Count 1 of the indictment, the evidence

12 in the case must show beyond a reasonable doubt that

13 Daniel Leveto knew the purpose or goal of the agreement or

14 understanding and deliberately entered into the agreement

15 intending, in some way, to accomplish the goal or purpose of

16 this common plan or joint action.

17 Merely associating with others and discussing

18 common goals, mere similarity of conduct between or among

19 such persons, merely being present at the place where a crime

20 takes place or is discussed, or even knowing about criminal

21 conduct does not, of itself, make someone a member of the

22 conspiracy or a conspirator.

23 In order to sustain its burden of proof under

24 Count 1 of the indictment, the government must prove beyond a

25 reasonable doubt that one of the members of the alleged

22

1 conspiracy or agreement knowingly performed at least one

2 overt act and that this overt act was performed during the

3 existence or life of the conspiracy and was done to somehow

4 further the goal of the conspiracy or agreement.

5 The term overt act means some type of outward,

6 objective action performed by one of the parties to or one of

7 the members of the conspiracy, for the purpose of advancing

8 or helping the conspiracy.

9 Now, Count 1 of the indictment lists 74 overt acts

10 in paragraphs 32 through 105. Although you must unanimously

11 agree that the same overt act was committed, the government

12 is not required to prove more than one of the overt acts

13 charged.

14 The overt act may, but for the alleged illegal

15 agreement, appear totally innocent and legal. But, the

16 government must prove that at least ones of these acts was

17 committed by a member of the conspiracy, and that it was

18 committed for the purpose of advancing or helping the

19 conspiracy. This is essential.

20 Now, some of the people who may have been involved

21 in these events are not on trial. This does not matter.

22 There is no requirement that all members of a conspiracy be

23 charged and prosecuted or tried in one proceeding.

24 The testimony must prove that there was an unlawful

25 object to the conspiracy. It's not a defense to the

23

1 conspiracy charge that the defendant may also have had legal

2 objectives if he had an illegal objective.

3 A conspiracy may have several objectives, but if

4 any one of them is to defraud the United States, then the

5 conspiracy is unlawful.

6 In determining a defendant's intent, you may take

7 into consideration any evidence you find of any conduct which

8 would be likely to mislead or conceal, such as the

9 concealment of facts.

10 One last point about conspiracy. It is no defense

11 to a conspiracy charge that success was impossible because of

12 circumstances that the defendants did not know about. This

13 means that you may find the defendant guilty of conspiracy

14 even if it was impossible to successfully complete the crimes

15 that they agreed to commit.

16 That is the end of the discussion on conspiracy.

17 Counts 2 and 3 of the indictment are basically the

18 same, but they are for different years.

19 Count 2 of the indictment charges that on or about

20 April 15th, 1995 -- of course, April 15th is any year when

21 your taxes are due and your return is due.

22 Count 2 of the indictment charges that on or about

23 April 15th, 1995, the defendant Daniel Leveto willfully made

24 and signed a joint tax return for the calendar year 1994,

25 which he did not believe to be true and correct as to every

1 material matter and which contained or was verified by a

2 written declaration that it was made under the penalty of

3 perjury.

4 Count 3 of the indictment charges that on or about

5 April 15th, 1996, defendant Daniel Leveto willfully made and

6 signed a joint tax return for the calendar year 1995, which

7 he did not believe to be true and correct as to every

8 material matter and which contained or was verified by a

9 written declaration that it was made under the penalty of

10 perjury.

11 Now, the following instructions on the law apply to

12 Count 2 and Count 3, as they charge violations of the same

13 statute for different years. However, as you can see on the

14 verdict form, you will render a separate verdict on Count 2

15 and Count 3.

16 Now, the statute that he's charged with violating

17 there says this:

18 Section 7206(1) Title 26 of the United States Code.

19 Quote: Any person who willfully makes and

20 subscribes any return, statement or other document, which

21 contains or is verified by a written declaration that it is

22 made under the penalties of perjury, and which he does not

23 believe to be true and correct as to every material matter

24 shall be guilty of an offense against the United States.

25 Now, on these charges, in order to sustain its

25

1 burden of proof for the crime of willfully filing a false

2 Joint Federal Income Tax Return as charged in Counts 2 and 3

3 of the indictment, the government must prove the following

4 five essential elements beyond a reasonable doubt:

5 One. Defendant Daniel Leveto made and signed a tax

6 return that contained false information as to a material

7 matter as detailed in the indictment.

8 Two. Defendant Daniel Leveto knew that this

9 information was false.

10 Three. The false statement was material.

11 Four. The return contained a written declaration

12 that it was being signed subject to the penalties of perjury.

13 And, five. In filing the false tax return,

14 defendant Daniel Leveto acted willfully.

15 Now, I instruct you that United States Joint

16 Individual Income Tax Returns, Form 1040, are documents as

17 contemplated by Section 7206(1) of the Internal Revenue Code.

18 An income tax return is made when it's filed with
19 the Internal Revenue Service. It's subscribed when it is
20 signed by the taxpayer, or when he authorizes another to sign
21 his name for him.

22 A statement or representation is false if it was
23 untrue when made and was then known to be untrue by the
24 person making it or made with reckless indifference as to its
25 truth or falsity.

26

1 A statement, claim or document is fraudulent if it
2 was falsely made, or made with reckless indifference as to
3 its truth or falsity, and made or caused to be made with an
4 intent to deceive.

5 The indictment charges that Daniel Leveto filed a
6 false tax return for the years 1994 and 1995 in that he
7 failed to disclose and omitted gross receipts from a business
8 activity, as he then and there well knew and believed, he was
9 required to disclose the gross receipts from the business
10 activity on his tax return and he failed to disclose that he
11 had an interest in or a signature or other authority over a

12 financial account in a foreign country, whereas he then and

13 there well knew and believed, that he had an interest in or a

14 signature or other authority over a financial account in a

15 foreign country.

16 A tax return that omits material items necessary to

17 the computation of income is not true and correct within the

18 meaning of the statute. True and correct means more than

19 that no false figures have been used and that the arithmetic

20 is accurate. The two terms, true and accurate, mean that the

21 document described is both accurate and complete. It's not

22 necessary for the government to prove that the defendant

23 intended to evade taxes.

24 Thus, if you find that Daniel Leveto omitted or

25 failed to disclose gross receipts from a business activity,

1 you may find that he filed a false income tax return.

2 The indictment also charges that the defendant

3 filed a false tax return for the years 1994 and 1995 in that

4 he failed to disclose that he had an interest in or a

5 signature or other authority over a financial account in a

6 foreign country, whereas he then and there well knew and

7 believed, that he had an interest in or a signature or other

8 authority over a financial account in a foreign country.

9 Thus, if you find that Daniel Leveto failed to

10 disclose that he had an interest in or a signature or other

11 authority over a financial account in a foreign country, you

12 may find that he filed a false income tax return.

13 Section 6064 of the Internal Revenue Code provides

14 that:

15 The fact that an individual's name is signed to a

16 return shall be prima facie evidence for all purposes that

17 the return was actually signed by him.

18 In other words, you may infer and find that a tax

19 return was, in fact, signed by the person whose name appears

20 to be signed to it. You are not required, however, to accept

21 any such inference or to make any such finding.

22 If you find beyond a reasonable doubt from the

23 evidence in the case that the defendant, Daniel Leveto,

24 signed the tax returns in question, then you may also draw

25 the inference and you may also find, but are not required to

1 find, that Daniel Leveto knew of the contents of the return

2 that he signed.

3 In general, a false statement is material if it is

4 one that has a natural tendency to influence or is capable of

5 influencing the decision-making body to which it addressed or

6 impede the Internal Revenue Service in determining the

7 correctness of the tax return. It's not necessary for the

8 Internal Revenue Service to have actually relied on the false

9 statement.

10 To find a defendant guilty of violating

11 Section 7206(1), you must not only find that he filed an

12 income tax return which was false as to a material matter,

13 but you must also find that the defendant did so willfully.

14 The word willfully, as used in this statute, means

15 a voluntary, intentional violation of a known legal duty. In

16 other words, the defendant must have acted voluntarily and

17 intentionally and with the specific intent to do something he

18 knew the law prohibited, that is to say, with intent either

19 to disobey or to disregard the law.

20 A defendant does not act willfully if he believes

21 in good faith that he's acting within the law or that his

22 actions comply with the law. This is so even if the

23 defendant's belief was not reasonable as long as he held the

24 belief in good faith.

25 In determining the issue of willfulness, you are

29

1 entitled to consider anything done or omitted to be done by

2 the defendant and all facts and circumstances in evidence

3 that may aid in the determination of his state of mind. It's

4 obviously impossible to ascertain or prove directly the

5 operations of the defendant's mind, but a careful and

6 intelligent consideration of the facts and circumstances

7 shown by the evidence in any case may enable one to infer

8 what another's intentions were in doing or not doing things.

9 With the knowledge of definite acts, we may draw definite

10 logical conclusions.

11 The reasonableness of a belief is a factor for the

12 jury to consider in determining whether the defendant

13 actually held a belief and acted upon it. The more

14 far-fetched the belief is, the less likely it is that a

15 person actually held or would act on that belief.

16 If a person acts without reasonable grounds for the

17 belief that his conduct is lawful, it is for the jury to

18 determine whether that person has willfully violated the law.

19 A defendant who knows what the law is and who disagrees with

20 it does not have a good faith misunderstanding defense.

21 Neither a defendant's disagreement with the law nor his

22 personal belief that such a law is unconstitutional, no

23 matter how earnestly he holds those views, can constitute the

24 defense of good faith misunderstanding or mistake. It's the

25 duty of all citizens to obey the law whether they degree with

30

1 it or not.

2 We are, in our daily affairs, continuously called

3 upon to decide from the acts of others what their intentions

4 or purposes are, and experience has taught us that frequently

5 actions speak more clearly than spoken or written words. To

6 this extent, you must rely in part on circumstantial evidence

7 in determining the guilt or innocence of the defendant.

8 And in this regard, there are certain matters that

9 you may consider as pointing to willfulness, if you find such

10 matters to exist in this case. By way of illustration only,

11 willfulness may be inferred from conduct such as concealment

12 of assets or covering up sources of income, handling one's
13 affairs to avoid making the records usual in transactions of
14 this kind, and any conduct the likely effect of which would
15 be to mislead or to conceal.

16 I give you these instances simply to illustrate the
17 type of conduct you may consider in determining the issue of
18 willfulness. I do not by this instruction mean to imply that
19 the defendant did engage in any such conduct. It's for you
20 as the trier of the facts to make this determination as to
21 whether the defendant did or did not.

22 Now, the summaries and charts -- these are the
23 charts you saw towards the end of the case -- the summaries
24 and charts prepared by the United States were presented at
25 trial for the purpose of explaining facts disclosed by other

1 documentation which is in evidence in this case. Such
2 summaries or charts are not, in and of themselves, evidence
3 or proof of any facts. These summaries and charts are not
4 better than the testimony and documents on which they were
5 based. You're to give no greater consideration to these

6 summaries and charts than you would give to the evidence upon

7 which they are based.

8 It is for you to decide whether the summaries and

9 charts correctly present the data and information contained

10 in the testimony and the exhibits upon which they are based.

11 You are entitled to consider the summaries and charts if you

12 find that they are of assistance to you in analyzing and

13 understanding the evidence.

14 The government may prove that defendant Daniel

15 Leveto acted knowingly by proving beyond a reasonable doubt

16 that this defendant deliberately closed his eyes to what

17 would otherwise have been obvious to him. No one can avoid

18 responsibility for a crime by deliberately ignoring what is

19 obvious. A finding beyond a reasonable doubt of an intent of

20 defendant Daniel Leveto to avoid knowledge or enlightenment

21 would permit the jury to find knowledge. Stated another way,

22 a person's knowledge of a particular fact may be shown from a

23 deliberate or intentional ignorance or deliberate or

24 intentional blindness to the existence of that fact.

25 It is, of course, up to you as to whether you find

1 any deliberate ignorance or deliberate closing of the eyes

2 and any inferences to be drawn from any such evidence.

3 You may not conclude that defendant Daniel Leveto

4 had knowledge, however, from proof of a mistake, negligence,

5 carelessness, or a belief in an inaccurate proposition.

6 There is a distinction between civil liability for

7 the payment of taxes and criminal liability. This is a

8 criminal case. The defendant is charged with the commission

9 of a crime, and the fact that there may be civil tax

10 consequences for his conduct may not be considered by the

11 jury in determining the issues in this case.

12 Now, that concludes my instructions to you on the

13 law as it pertains to the charges contained in this

14 indictment. Let me just give you a few suggestions for

15 organizing yourselves here.

16 Upon retiring to the jury room, you will select one

17 of you to act as your foreperson, and the foreperson will

18 preside over your deliberations and will be your spokesman

19 here in court. You may want to select a secretary also.

20 Your verdict must represent the collective judgment

21 of the jury. In order to return a verdict, it's necessary

22 that each juror agree thereto. Your verdict must be

23 unanimous.

24 It is your duty as jurors to consult with one

25 another and to deliberate with a view to reaching an

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1 agreement, if you can do so without violence to individual

2 judgment. Each of you must decide the case for yourself, but

3 do so only after an impartial consideration of the evidence

4 in the case with your fellow jurors. In the course of your

5 deliberations, do not hesitate to re-examine your own views

6 and change your opinion, if convinced that it is erroneous.

7 But, do not surrender your honest conviction as to the weight

8 or effect of evidence simply because of the opinion of your

9 fellow jurors, or for the mere purpose of returning a

10 verdict.

11 Remember at all times, you are not partisans. You

12 are judges, judges of the facts of this case. Your sole

13 interest is to seek the truth from the evidence received

14 during the trial.

15 Your verdict must be based solely upon the evidence

16 received in the case. Nothing you seen or read outside the

17 of the courtroom may be considered. Nothing I have said or
18 done during the course of this trial is intended in any way
19 to somehow suggest to you what I think your verdict should
20 be. Nothing said in these instructions or nothing in any
21 form of verdict prepared for your convenience is to suggest
22 or to convey to you in any way or manner any intimation as to
23 what verdict I think you should return. What the verdict
24 shall be is the exclusive duty and responsibility of the
25 jury. As I have told you many times, you are the sole judges

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1 of the facts.
2 The punishment provided by law for the offense
3 charged in the indictment is a matter exclusively within the
4 province of the Court and should never be considered by you
5 in any way in arriving at an impartial verdict as to the
6 offense charged.
7 And you'll receive a form of verdict sheet here and
8 I will go over that with you right now. Do you have that
9 there?
10 You'll each get a copy of the verdict sheet, but

11 the one in the blue back is the one that, once you have

12 reached a verdict, that's the one you should sign. Again,

13 you will each have a copy.

14 Do they have one in front of you? You don't have

15 one now? Okay.

16 Well, it's really pretty simple. It simply states:

17 Count 1, and then you mark guilty or not guilty. Just put an

18 x in the blank. Same for Count 2. Same for Count 3.

19 And then, after you've reached your verdict, then

20 the foreperson will insert the date and sign it, and then the

21 rest of you will all sign it also.

22 So, as I said, you take this form to the jury room

23 and when you've reached your unanimous verdict, you'll have

24 your foreperson write your verdict, date and sign the form,

25 then you'll each sign the form and return it with your

1 verdict to the courtroom.

2 If it becomes necessary during your deliberations

3 to communicate with the Court, you may send a note signed by

4 your foreperson, or by one or more members of the jury,

5 through the bailiff.

6 And in a minute, Richard is going to magically
7 become a bailiff. He will take an oath and he will become a
8 bailiff.

9 No member of the jury should ever attempt to
10 communicate with the Court by any means other than a signed
11 writing, and the Court will never communicate with any member
12 of the jury on any subject touching the merits of the case
13 other than in writing or orally here in open court.

14 And you will note from the oath about to be taken
15 by Richard, the bailiff, that he, too, as well as other
16 persons, is forbidden to communicate in any way or manner
17 with any member of the jury on any subject touching on the
18 merits of the case.

19 Bear in mind also that you are never to reveal to
20 any person -- not even to the Court -- how the jury stands
21 numerically or otherwise on the question of the guilt or
22 innocence of the accused until after you have reached a
23 unanimous verdict.

24 Now, may I see the lawyers and Dr. Leveto at
25 sidebar.

1 (Sidebar discussion.)

2 THE COURT: Mr. Voracek, have I omitted or
3 misstated anything in the instructions?

4 MR. VORACEK: No, Your Honor.

5 THE COURT: Ms. Calvin?

6 MS. CALVIN: No, Your Honor.

7 THE COURT: Mr. Leveto?

8 MR. LEVETO: No, Your Honor.

9 THE COURT: Okay.

10 (End of sidebar.)

11 THE COURT: The clerk will swear the bailiff.

12 (The bailiff was sworn in.)

13 THE COURT: Well, as the jury is about to retire, I
14 want to say something to our alternate jurors, Susan Guianen
15 and Robert Nahay. You served well. This whole jury has been
16 very prompt and attentive. I think, and I know that you,
17 too, would make very fine jurors, but the law does require
18 that only twelve people go to the jury room to deliberate.

19 So, I am going to excuse you at this point with my
20 thanks and the thanks of all the lawyers in the case, all the
21 parties in the case.

22 Now, ladies and gentlemen, I am about to direct
23 that you do be taken to the jury room for deliberations on
24 the verdict which you are going to be required to render.
25 Take up the case carefully, for it's an important case to

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1 both the defendant and the government. Give each item
2 careful consideration and arrive at a proper verdict. Have
3 your foreperson record the verdict slip as to each count on
4 the verdict slip, return the verdict slip to us at the
5 appropriate time, and your verdict will then be announced in
6 open court.

7 Your verdict should be one which you feel justice
8 dictates after calm and deliberate consideration of all the
9 evidence. Do not be hasty or impetuous, but be true to the
10 oath that you have taken.

11 With that, we will excuse you. I'll have the
12 parties go over the exhibits, then they will be brought up to
13 you.
14 (The jury left the courtroom.)

15 THE COURT: I take it no one has any objection to

16 the government having an exhibit list by numbers with no

17 additional comments on it?

18 MR. WILLIAMS: (Law Clerk) In which we'll include

19 the Defendant's Exhibits.

20 MR. VORACEK: Yes. At the very end, we will

21 include A, B, C with just a brief description of the exhibits

22 as reflected in the jury list.

23 MR. WILLIAMS: (Law Clerk) Before it goes in,

24 have them look at it.

25 MR. VORACEK: Absolutely. We just need to add

1 those three on the list and then we'll print it.

2 THE COURT: Do they have this one about the travel

3 stuff?

4 MR. VORACEK: Yes, we've checked. It's in there.

5 THE COURT: All right.

6 (Court recessed at 9:30 a.m.)

7 (Court reconvened at 11:30 a.m. in chambers.)

8 THE COURT: Okay. We have three questions.

9 For the record, question number one says, Ref

10 period -- I guess that means refer -- to exhibit that looks

11 like 6A. Does the government have a Center Company Form 1040

12 NMF for periods prior to December, 1991? For instance, the

13 1990 1040 NMF form?

14 And I assume that that was not introduced. I mean,

15 do you know if it's there, or was there one?

16 MR. VORACEK: Well, Your Honor, that was not in the

17 exhibits that were admitted into evidence. The very first

18 one, the NMF form that we submitted was the one for 1991,

19 which is found at 6A.

20 THE COURT: You can't tell them more than what

21 happened during the trial. So, do you have any comment on

22 that?

23 MR. LEVETO: I agree.

24 THE COURT: I think we just say that a 1990 form

25 for Center Company was not admitted into evidence. That

1 would be the answer.

2 What I usually do is just -- I write -- give them a

3 written response rather than having them troop into the

4 courtroom, unless there is something that really needs some

5 explaining to be done.

6 MR. WILLIAMS: (Law Clerk) 1990 form for Center

7 Company was not admitted into evidence? That's what you want

8 to say?

9 THE COURT: A. I wouldn't say the. A 1990.

10 MR. WILLIAMS: (Law Clerk) A 1990.

11 THE COURT: NMF.

12 MR. WILLIAMS: (Law Clerk) 1040 NMF.

13 MR. LEVETO: What's NMF?

14 MS. CALVIN: Non-master file.

15 THE COURT: Well, his question is: Does the

16 government -- does the government have a form, and then he

17 says, for instance.

18 I would say the only -- I would say this: No other

19 forms were -- no other 1040 NMF forms were admitted into

20 evidence, other than those --

21 MR. MISKO: Contained within -- Other than those

22 contained in the exhibit list.

23 THE COURT: Other than those contained in the

24 exhibit list. That's good. Okay.

25 They obviously have some frustrations on this one.

1 They say: In this mass of documents, is there anything that
2 shows the actual sales transaction of the bus. -- I guess
3 they mean business -- goodwill for Dr. Leveto to Center Corp.
4 or to Jack Williams?

5 MR. VORACEK: Your Honor, the sales agreement was
6 exhibited at No. 92.

7 MR. LEVETO: 92, that's correct.

8 THE COURT: Does that have a goodwill item in it?

9 MR. LEVETO: It explains most everything and it has
10 signatures, and it's pretty much the --

11 THE COURT: Well, we'll just say -- I guess the
12 answer to that question is -- we want to write the question
13 each time and then our answer.

14 MR. WILLIAMS: (Law Clerk) Yes.

15 THE COURT: And this one then, see Exhibit 92.

16 MR. VORACEK: Yes, sir.

17 MR. LEVETO: Yes.

18 THE COURT: Okay. Next. Miss Iddon read the
19 instructions on offshore account limitations. Do not believe
20 that document was submitted into evidence. Can we get a copy

21 of or a re-reading of the exact text?

22 I don't know what they are talking about.

23 MR. MISKO: She read verbatim from an IRS form. Am

24 I correct on that?

25 MR. VORACEK: She refreshed her recollection by

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1 looking at the instructions for that section regarding

2 foreign accounts.

3 MR. LEVETO: And we had '94 and '95 in the

4 explanation offering it. It was a very nice instruction not

5 just off of the Schedule B. She had those nice instructions.

6 Mine is back at the prison, but I don't think it was admitted

7 into evidence, if I'm correct.

8 MR. MISKO: Judge, if I could suggest maybe get

9 that part of the testimony from Mr. Powers and just read it

10 back to them.

11 THE COURT: Boy, I really hate to get into

12 re-reading testimony because that becomes epidemic sometime.

13 MR. LEVETO: Not only that, but there was a lot of

14 that form that would be germane for them to see.

15 MR. MISKO: But, it is not admitted.

16 THE COURT: I would just say, the instructions
17 referred to in this question -- because they will have the
18 question -- the instructions referred to in this question
19 were not admitted into evidence and are, therefore,
20 unavailable.

21 MR. WILLIAMS: (Law Clerk) Do you want to put in
22 a reminder that you're to rely on your memory, or something
23 like that?

24 THE COURT: Yes. You must rely on your memory, on
25 your collective memories and notes.

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1 MR. WILLIAMS: (Law Clerk) Or is that just
2 extra --

3 THE COURT: Maybe that's gilding the lily. I'd
4 leave the reminder off. Just answer the question.

5 MR. WILLIAMS: (Law Clerk) Okay.

6 THE COURT: Why don't you read back our answers
7 you. Now, I will read the question, you read the answer.
8 Okay.

9 Refer to Exhibit 6A. Does the government have a

10 Center Company form 1040 NMF for periods prior to December,

11 1991? For instance, the 1990 1040 NMF form?

12 MR. WILLIAMS: (Law Clerk) Answer: No other 1040

13 NMF forms were admitted into evidence other than those

14 contained in the exhibit list.

15 THE COURT: Next question is: In this mass of

16 documents, is there anything that shows the actual sales

17 transaction of the -- I am saying -- business, goodwill for

18 Dr. Leveto to Center Corp. or to Jack Williams?

19 MR. WILLIAMS: (Law Clerk) Answer: See

20 Exhibit 92.

21 THE COURT: Okay. And then the last one is:

22 Miss Iddon read the instructions on offshore

23 account limitations. Do not believe that document was

24 submitted into evidence. Can we get a copy of or a

25 re-reading of the exact text?

1 MR. WILLIAMS: (Law Clerk) The instructions

2 referred to in this question were not admitted into evidence,

3 period.

4 THE COURT: Yes.

5 MR. WILLIAMS: (Law Clerk) I would just say, do

6 you think that they will come back with a question saying,

7 well, can we get a re-reading of the text?

8 THE COURT: Well, let's cross that bridge when we

9 come to it.

10 MR. WILLIAMS: (Law Clerk) All right. I'll type

11 that up.

12 THE COURT: These become part of the record, the

13 originals of the question.

14 MR. MISKO: Judge, I am curious, should you also

15 maybe instruct the jury that the only documents they are

16 going to be reviewing are the ones contained specifically

17 within the exhibit list?

18 That way, they don't come back and say, is this

19 exhibit -- do we have this?

20 MR. WILLIAMS: (Law Clerk) I would say these

21 questions sort of suggest that they know that, the fact that

22 they refer to the one --

23 THE COURT: Let's wait. I always hate to give them

24 more than they ask for.

25 MR. WILLIAMS: (Law Clerk) Because they say in

1 here, we do not believe this one was submitted into evidence.

2 MR. MISKO: Okay.

3 MR. WILLIAMS: (Law Clerk) I double checked to
4 make sure they had the exhibit list. And when I asked that
5 question, they said yes, and we are looking through it for
6 the answer to this question.

7 MR. LEVETO: The answer really gives it to them.

8 The instructions referred to in that question were -- was not
9 admitted.

10 THE COURT: And I also put it in my letterhead, the
11 jury was asked the following question, and then question and
12 answer.

13 MR. WILLIAMS: (Law Clerk) I think I have a jury
14 form.

15 (Court recessed at 11:50 a.m. in chambers.)

16 (Court reconvened in chambers at 1:10 p.m.)

17 THE COURT: Did you give them the question?

18 MR. WILLIAMS: (Law Clerk) Yes, they have the
19 question.

20 THE COURT: Okay. There is no evidence, or what do

21 we say?

22 MR. WILLIAMS: (Law Clerk) Did you put the
23 question on the record?

24 THE COURT: No, I didn't.

25 The question is: Was the sale of Dr. Leveto's

45

1 business to Center Company ever finalized? Question mark.

2 Document? Question mark. Timing? Question mark.

3 MR. LEVETO: Well, that's the agreement. It's got

4 dates on it, but the copy is --

5 THE COURT: Well, an agreement is not the same as a
6 closing.

7 MR. LEVETO: Well, there is nothing more in
8 evidence, I don't believe.

9 MR. VORACEK: The only thing there is, Your Honor,
10 is, at Exhibit 115 was a letter from Russell Schetromra to
11 Daniel Leveto which discussed the Center Company deal and
12 that it was not finalized as of sometime in 1992, I believe.

13 THE COURT: Yeah. Well, that was discussed in your
14 closing.

16 MR. LEVETO: The only thing is, that he wasn't the

17 one that did the final things on it, and that is in evidence.

18 But, this document and what wasn't with this document wasn't

19 on the premises. Actually, it was sent away for some of the

20 intricacies of the closing and it wasn't there. It wasn't

21 with these documents.

22 The thing that's here is the date of the document

23 memorializing the sale and the agreement, but that is all

24 there was. Russell Schetromma was only half of the legal

25 counsel involved.

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1 THE COURT: Well, I guess the thing to say is, the

2 only document entered into evidence is the agreement of sale

3 previously referred to in that Exhibit 91, or whatever it

4 was.

5 MS. CALVIN: 92.

6 MR. WILLIAMS: (Law Clerk) 92. Do you want that?

7 MR. LEVETO: I think that's correct.

8 MR. VORACEK: The only document relating to the

9 sale or --

10 THE COURT: Well --

11 MR. LEVETO: The only document entered into
12 evidence.

13 THE COURT: Well, I think you have to -- the only
14 document -- if you say relevant to the sale, then that letter
15 from Schetroma, or whatever his name is --

16 MR. VORACEK: That was Exhibit 115 where Russell
17 Schetroma referred to the closing of the sale in a letter to
18 Daniel Leveto.

19 THE COURT: But, he just said there wasn't a
20 closing --

21 MR. VORACEK: Right. That his office was at least
22 not aware of any closing.

23 MR. LEVETO: That's why I don't think that should
24 be where -- that's leading.

25 MR. VORACEK: I don't want to give the jury a false

1 impression that there are no other documents in evidence that
2 relate to the sale whatsoever other than document 92. I
3 think that's misleading as well.

4 MR. LEVETO: But, I don't believe it is misleading

5 to not point to an attorney that didn't do it.

6 THE COURT: I would say -- I would say no closing

7 document was admitted into evidence.

8 MR. LEVETO: I think that's correct.

9 THE COURT: Any problem with that?

10 MS. CALVIN: No.

11 MR. VORACEK: No problem.

12 THE COURT: Okay. No closing document was entered

13 into evidence. And do the same routine we did before.

14 MR. WILLIAMS: (Law Clerk) Okay.

15 MR. MISKO: Judge, is there a timetable today?

16 THE COURT: Well, what I usually do if I got a jury

17 that is out, I'll usually have Richard stick his head in

18 about quarter to five and say, how are you doing? Are you

19 tired? Do you want to go home? What do you want to do?

20 I will be around here for today as long as it

21 takes. Tomorrow, I got an appointment in Pittsburgh that I

22 can't avoid, but Judge McLaughlin has already agreed to take

23 the verdict.

24 MR. MISKO: We just come back at nine?

25 THE COURT: I guess nine, yes.

1 (Court recessed on Thursday, June 2, 2005, in chambers.

2 at 1:15 p.m.)

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4 * * * * *

5 I certify that the forgoing is a correct transcript

6 from the record of proceedings in the above-entitled matter.

7

8 S/Michael D. Powers

9 Michael D. Powers

Official Reporter

10 *****NOT CERTIFIED WITHOUT ORIGINAL SIGNATURE*****

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